



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant : Yehia Awada )  
Serial No. : 09/917,082 )  
Filed : July 30, 2001 )  
For : Combined Poker )  
Examiner : Capron )

Grp Art Unit 3714  
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BRIEF ON APPEAL

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REAL PARTY IN INTEREST

Appellant is the real party in interest.

RELATED APPEALS AND INTERFERENCES

Appellant is not aware of any related appeals or  
interferences.

STATUS OF CLAIMS

Claims 2-20 have been finally rejected. Claims 2-7, 14-20  
are the subject of this appeal. No other claims are pending.

STATUS OF AMENDMENTS

There has been an After Final Amendment that raised an issue  
of the propriety of using patent no. 5,975,529 as a reference.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

**SUMMARY OF THE INVENTION**

The best known poker games are three card Poker, five card Stud Poker and seven card Stud Poker. The present invention combines features in all of these games to provide a player with a poker playing experience that is heretofore unknown.

In accordance with one aspect of the invention, prior to a start of play, the player has an option of making any of three Poker wagers that include a three card Stud Poker wager, a five card Stud Poker wager and a seven card Stud Poker wager. After the wagers have been made, three cards are dealt to the player whereby the player has a three card Stud Poker hand. Additionally, four community cards are dealt face down.

When the player has made the three card wager, a payout is made to the player in accordance with a payout table. After the three card wager is settled, two of the community cards are turned face up whereby the player has a five card Stud Poker hand that includes the player's three dealt cards and the two community cards that are face up. When the player has made the five card Stud Poker wager, a payout is made to the player in accordance with the payout table.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

The remaining two community cards are turned face up whereby the player has a seven card Stud Poker hand that includes the player's three dealt cards and the four community cards that are now face up. When the player has made the seven card Stud Poker wager, a payout is made to the player in accordance with the payout table.

In accordance with another aspect of the invention, the player makes a seven card Stud Poker wager and is dealt four cards. The player has an option of making a three card Stud Poker wager after the four cards are dealt.

Three community cards are then dealt that form a three card Stud Poker hand. The player's four cards and the three community cards form a seven card Stud Poker hand. When the player makes the three card wager, a three card payout is made to the player based upon the rank of the three card Stud Poker hand. A seven card payout is made to the player based upon the rank of the seven cars Stud Poker hand.

In yet another aspect of the invention, a gaming machine gives a player an option of making a five card wager and a seven card wager. A video screen of the gaming machine then provides video images of five cards, face up. The player may then cause

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

the machine to make a replacement of the images of the cards, whereby the machine provides an image of a five card Draw Poker hand. A Draw Poker payout is made is made to the player based upon the rank of the Draw Poker hand.

Face up images of two additional cards are then provided whereby and the images of the two additional cards and cards of the five card Draw Poker hand form an image of a seven card Stud Poker hand. A seven Card Stud Poker payout is made to the player based upon the rank of the seven card Stud Poker hand.

#### **ISSUES**

Issue 1 - Whether or not it is permissible to use patent no. 5,975,529, an incomplete document, as a reference.

Issue 2 - Whether or not claims 2-7, 14-18 are unpatentable under 35 U.S.C. 103 (a).

Issue 3- Whether or not claims 19-20 are unpatentable under 35 U.S.C. 103 (a).

#### **GROUPING OF CLAIMS**

For each ground of rejection that Appellant contests herein

**Appellant : Yehia Awada**

**Serial No.: 09/917,082**

**Filed : 07/30/2001**

that applies to more than one claim, such additional claims, to the extent separately identified and argued below, do not stand or fall together.

### **THE ARGUMENT**

***Issue -1- Whether it is permissible to use an incomplete document as a reference.***

The '529 patent of de Keller is used as a reference to support a rejection of claims 2-7, 14-18 of the application. Column 4, line 32 refers to a FIG 1a which is not shown in the drawing of the patent. Column 4, line 54, refers to a table A which is not shown in either the drawing or specification of the patent. Column 4, line 58 refers to a table B which is not shown in either the drawing or the specification.

Figure 1 includes the characters, 1a, connected to a lead line that goes to a table top. The characters, 1a, are not explained in the specification.

In summary, the patent is a defective document. It is believed that because of defects in the patent, appellant and the examiner in charge of the case have differences of opinion as to

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

what the patent does and does not disclose. The differences of opinion are apparent in the following argument of issue 2.

The defects in the patent have placed an unfair burden on the appellant in the prosecution of the above-identified patent application. Because of the unfair burden, the patent should be withdraw as a reference and claims 2-7, 14-18 should be allowed.

***Issue -2- Whether claims 2-7, 14-18 are unpatentable under 35 U.S.C. 103 (a) as being obvious over de Keller in view of 357.***

THE '529 PATENT OF DE KELLER

de Keller discloses a game where two cards are dealt to a player and three community cards are dealt. de Keller's game has two objects. A first object is to "make a good poker hand using two cards and three community cards" (Column 4, lines 10 and 11). "... a house payment schedule lists a series of poker hands with corresponding payoffs..." (Column 4, lines 13-15). A second object is to provide for "...a bet solely between the players and does not involve a wager against the house." (Column 4, lines 17-18). Only the first object is germane to a resolution of issue 2.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

In accordance with the first object, de Keller discloses a player making an initial bet and, referring to a FIG. 2, dealing two cards face down to the player and dealing three community cards, one face up and two face down, which is said to "complete each player's five card hand." de Keller refers to a FIG 1a (which does not exist), and states that

"[e]ach player has the option of discarding their first, or second card, or both, face down. Players may at this stage, either 'stand' by making no further bets or raise..." (Column 4, lines 32-34)

FIG. 2 indicates that the player's cards that are discarded are replaced by other cards. Moreover, FIG 2 indicates that after the cards are replaced the, word, "raise", in the column 4, lines 32-34 probably means doubling the initial bet.

de Keller further states that "[w]hen all wagers have been placed...the fourth card is revealed by the dealer." (Column 4, lines 35-37) Correspondingly, FIG 2 states "DEALER SHOWS FOURTH CARD". The fourth card is one of the two community cards that are face down.

de Keller states that after the fourth card is revealed,

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

"[p]layers may again either stand at this stage or raise..." (column 4, lines 37 and 38). FIG 2 indicates that the word, "raise", in column 4, line 38 probably means tripling the initial bet.

FIG 2 further indicates that after making the decision whether or not to triple the initial bet, "DEALER SHOWS FIFTH CARD". The fifth card is the remaining one of the two community cards that is face down.

FIG 2 additionally indicates that after the dealer shows the fifth card that "PLAYERS SHOW CARDS". When the players show their two cards, the five card poker hand of each player is face up whereby wagers can be settled.

#### 357 POKER GAME

Although unstated, presumably 357 starts with a plurality of players each posting an ante to form a first pot. After the posting of the antes, a first round of play starts with a three card Poker hand being dealt to each player with threes wild. Each player decides whether they want to participate in the first round. The players that participate in the first round expose their hands. The player that exposes the highest ranking three



**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

card Poker hand wins the first pot. In the words of 357, "[b]est hand wins". The losers in the first round match the first pot and the non-participants post an ante whereby a second pot is formed.

A second round of play starts with two additional cards being dealt to the players whereby each player has a five card Poker hand where fives are wild. Each player decides whether they want to participate in the second round of play. Presumably, the player with the highest ranking five card poker hand wins the second pot. The losers in the second round match the second pot and the non-participants post an ante whereby a third pot is formed.

A third and final round of play starts with two additional cards being dealt to the players whereby each player has a seven card Poker hand where sevens are wild. Presumably, the player with the highest ranking seven card Poker hand wins the third pot.

COMBINING DE KELLER AND 357

The rejection of claims 2-7, 14-18 is predicated upon a number of statements in the final rejection that should either be

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

clarified because they are inaccurate or disposed of because they are untrue. A statement that requires clarification is that 357 discloses making "... a payout to a player based upon the rank of the hand." In the words of 357, what is disclosed is a game where "best hand wins". Ranks of the player's hands are compared to determine which player has the highest ranking hand. Actual rank of the player's hands are unimportant.

The final rejection alleges that "...de Keller discloses a method wherein the player is dealt a plurality of cards and a plurality of community cards are dealt to create a poker hand..." As a matter of clarification, what de Keller discloses is a plurality of community cards, in addition to a plurality of cards dealt to the player, that creates a five card poker hand and only a five card poker hand. (Column 4 lines 31 and 32; claims 3-6 and 10)

The final rejection states that "...both references [357 and de Keller] pertain to poker games using seven cards." As stated above, de Keller is a game where only a five card poker hand is created. In order for de Keller to pertain to a poker game using seven cards, de Keller would have to create a seven card poker hand. de Keller does not create the seven card poker hand.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

Section 706.02(j) of the MPEP states that "[A]fter indicating that the rejection is under 35 U.S.C. 103, the examiner should set forth in the Office action: ... (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter..." This quoted portion of section 706.02(j) was ignored in the examination of the application.

Section 706.02(j) additionally sets forth three basic criteria for establishing a *prima facie* case of obviousness. "First there must be some suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings." As a motivation for combining de Keller and 357, the final rejection states that:

An artisan would be motivated to combine de Keller in view of 357 since multiple wagers would increase the opportunity of large winnings (increase pot) and create excitement amongst players."

After a round of play in 357, non participating players post an ante and losers match the pot. In de Keller, there is an opportunity for the players to raise prior to each of two community cards being shown (FIG 2 of de Keller). In other

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

words, both 357 and de Keller provide for multiple wagers whereby providing for multiple wagers cannot be the suggestion or motivation for combining 357 and de Keller.

A second of the criteria is that there must be a reasonable expectation of success in making the modification. Appellant respectfully submits that features of 357 and de Keller are so disparate that a modification necessary to arrive at appellant's claimed subject matter is not possible. The following is a tabulation of features of 357 and de Keller.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

357

de Keller

3 card, 5 card and 7 card poker hands are created in first, second and third rounds of play, respectively	a 5 card poker hand is created through the use of community cards
there is wagering prior to each round of play	there is an initial wager and wagering prior to each of two community cards being exposed
game is between players. "Best hand wins" a pot after each round of play	game is between the players and the house. A payout is in accordance with payout table after 5 card poker hand is formed

Finally, the combined references must teach or suggest all of appellant's claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on appellant's disclosure.

Appellant's claim 2 calls for dealing three cards to a

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

player, thereby providing the player with a three card Poker hand. The player has an opportunity to bet on the three card Poker hand. Four community are dealt, two of which are used to augment the three dealt cards to form a five card Poker hand. A remaining two of the community cards are used to form a seven card Poker hand. The player has an opportunity to bet on the five and seven card Poker hands. Nowhere in the art of record is there either a teaching or suggestion of using two community cards to augment a three card Poker hand to form a five card Poker hand and then use two community cards to augment the five card Poker hand to form the seven card Poker hand. Nowhere in either 357 or de Keller is there either a teaching or suggestion of a combination thereof that would arrive at anything comparable to appellant's claim 2.

Appellant's claim 14 calls for a player making a seven card Stud Poker wager, dealing four cards to the player and dealing three community cards face down. The player has an option of making a three card Stud Poker wager after the four cards are dealt. The three community cards form a three card Poker hand that is used to augment the player's four cards to form a seven card Poker hand. After the three cards are turned up, three card

**Appellant : Yehia Awada**

**Serial No.: 09/917,082**

**Filed : 07/30/2001**

and seven card payouts are made to the player based upon the ranks of the three and seven card hands, respectively

In connection with appellants claim 14, the final rejection alleges that:

"de keller discloses having a poker game...wherein a player can receive 4 cards and three community cards to form the best five card poker hand out of seven cards, but does disclose wagering and paying out based on a three card poker hand. One would be motivated to combine the references...since both games relate to versions of 7 card stud poker. Therefore, it would have been obvious ... to incorporate 357's method into de Keller because the additional betting round could create the possibility of having multiple winners..."

Regarding the above quoted allegation:

1. As explained hereinbefore, de Keller does not disclose "having a poker game...wherein a player can receive 4 cards and three community cards to form the best five card poker hand out of seven cards.
2. de Keller does disclose wagering on what can be regarded as a three card poker hand but does not disclose paying out based on a three card poker hand. What de Keller discloses is permitting a player to raise an initial bet when one face up community card and the player's two dealt cards are known to the

**Appellant : Yehia Awada**

**Serial No.: 09/917,082**

**Filed : 07/30/2001**

player. The initial bet, whether or not raised, is settled based upon the player's five card hand. This is made clear in claim 10 of de Keller.

3. As explained hereinbefore, de Keller does not disclose a version of seven card stud poker.

4. Since tables A and B of de Keller have been omitted therefrom, appellant assumes that de Keller provides for a payout to a player who holds a hand with the rank of a full house that includes three aces, for example. Because of de Keller's three community cards, it is possible for every player seated at a table, such as shown in de Keller's fig. 1, to simultaneously hold the hand with the rank of a full house that includes three aces. Accordingly, alleging that combining of 357 and de Keller would "create the possibility of having multiple winners" is not only untrue, it is a non sequitur.

In summary, the above quoted statement in the office action is entirely untrue. Hence, the examiner has not given "an explanation of why one of ordinary skill in the art at the time the invention was made would have been motivated to..." combine 357 and de Keller in accordance with MPEP 706.02(j) to show that claim 14 is obvious.



**Appellant : Yehia Awada**

**Serial No.: 09/917,082**

**Filed : 07/30/2001**

Claims 17 is to a method of operating a gaming machine to play a game which is the subject matter of claims 2 and 3. Claim 18, which depends from claim 17, provides for storage of a signal representation of a joker. Claims 17 and 18 are allowable for reasons similar to those given in connection with allowability of claims 2, 3 and 6.

For reasons given hereinbefore, issue 2 should be resolved in favor of appellant.

***Issue -3- Whether claims 19,20 are unpatentable under 35 U.S.C. 103 (a) as being obvious over Weingardt in view of Jones.***

**THE '818 PATENT OF WEINGARDT**

Weingardt discloses a video poker machine wherein signal representations of first, second and third decks of cards are stored. On Weingardt's machine, a player has a choice of playing either five card Draw Poker, six card Draw Poker or seven card Draw Poker.

The player can deposit seven tokens and play seven card poker where images of five cards are dealt from the first deck to a first five positions, respectively, on a video screen. Images

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

of a sixth card and a seventh card are dealt from the second and third decks, respectively, to a sixth and a seventh position, respectively thereby forming the seven-card hand. The player can replace any of the images in the first five positions by images of cards from the first deck. Images of cards in the sixth and seventh positions can be replaced by images of cards from the second and third decks, respectfully. The player has a choice of payment from either a five card, six card or a seven card payout table.

When the player decides to accept a payout from the seven card payout table, the highest ranking hand is a seven card Royal Flush, such as A♥, K♥, Q♥, J♥, 10♥, 9♥, 8♥ in any order of sequence. "The odds of obtaining a seven card Royal Flush are quite high and allow for a gaming establishment to pay a Super Jackpot on that combination. For example, a jackpot amount of 50,000 tokens, 10,000,000 tokens or even amounts in excess of that could be paid." (Column 7, lines 50-55) It should be understood that a player who obtains a six card Straight Flush or Royal Flush could receive a jackpot payout that would be less than the jackpot amount paid to the player who obtains the seven card Royal Flush.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

THE '150 PATENT OF JONES

In providing for a jackpot in a draw poker game, Jones discloses that a player may participate in a jackpot component in which the player is eligible to receive a jackpot prize by having an initial set of five cards comprising a predetermined arrangement, such as a royal flush, and is also eligible to win a reduced jackpot prize after a draw when the player's final hand comprises the predetermined arrangement.

COMBINING WEINGARDT AND JONES

Jones' method of providing Jackpot components of a game is especially created to be combined with other games. As part of an explanation for combining Jones and Weingardt, the office action confusingly alleges that:

"Weingardt discloses a poker game where a player has an option of placing a five card and seven card wager, the option of playing five card draw poker with the first five cards, the ability to make a five card payout to the player based on the wager, providing two additional cards face up, and making a seven card payout to the player based upon rank of five cards in the seven card hand but does not teach two separate payouts."

Thus, the office action first alleges that Weingardt

Appellant : Yehia Awada

Serial No.: 09/917,082

Filed : 07/30/2001

provides for a five card payout and a seven card payout and then states that Weingardt does not teach two separate payouts.

Appellant does not believe that a response should be made to the allegation because it is a non sequitur.

Perhaps the only motivation for ever combining Jones and Weingardt, or any other game, is to give a player an opportunity to win a large jackpot payout. Weingardt is a game that utilizes a payout table that provides the large jackpot payout. Therefore, there is no suggestion or motivation to combine Jones and Weingardt. Moreover, it is almost inconceivable that there would ever be a suggestion or motivation to combine Jones with a game that utilizes a payout table. Since the suggestion or motivation to combine Jones and Weingardt is necessary to establish a *prima facie* case of obviousness (MPEP 706.02(j)), issue 3 should be decided in favor of appellant.

Respectfully submitted,



Leonard Weiss  
2300 West Sahara Avenue, Box 34  
Las Vegas, NV 89102  
TEL: (702) 933-5505  
AX: (702) 933-5511

### APPEALED CLAIMS

2. In the method of using a standard deck of fifty two cards to play a game, comprising the steps of:

dealing three cards to a player;

providing an opportunity for the player to make a wager on a rank of a Poker hand formed from said dealt cards;

dealing out four community cards;

giving the player an option of making a five card Poker wager and a seven card Poker wager;

augmenting said player's three cards with two of said community cards to form a five card Stud Poker hand; and  
augmenting said player's three cards with said four community cards to form a seven card Stud Poker hand; and  
settling said wagers in accordance with a payout table.

3. In the method of claim 2 wherein said step of settling comprises the steps of:

making a three card payout to said player based upon a rank of said three card Poker hand;

making a five card payout to said player based upon a rank of said five card Poker hand; and

making a seven card payout to said player based upon a rank of said seven card Poker hand.

4. In the method of claim 2 wherein said community cards are dealt face down.

6. In the method of claim 2 wherein a joker is used as a wild card in playing the game.

7. In the method of claim 2 comprising the additional step of making a bonus payout to said player when a Poker hand has a rank higher than a known rank.

14. In a method of using a standard deck of fifty two cards to play a game, comprising the steps of:

a player making a seven card Stud Poker wager;

dealing four cards to said player;

5 dealing out three community cards face down;

giving said player an option of making a three card Stud poker wager after said four cards are dealt;

turning said community cards face up, a three card Stud  
Poker hand being formed by said community cards and a seven card  
10 Stud Poker hand being formed by said four cards augmented by said  
community cards;

making a three card payout to said player based upon the  
rank of said three card hand; and

making a seven card payout to said player based upon a rank  
15 of a selected five cards of said seven card hand.

15. In the method of claim 14 wherein a joker is used as a wild card in playing the game.

16. In the method of claim 14 comprising the additional step of making a bonus payout to said player when a Poker hand has a rank higher than a known rank.

17. In the method of playing a Poker game on a gaming machine that stores signal representations of images of fifty two cards of a standard deck of cards, comprising the steps of:

giving a player an option of making a payment representative  
5 of a three card wager, a five card wager and a seven card wager;

causing a video screen of the gaming machine to provide an image of each of seven cards that are face down;

said player causing said video screen to replace three of  
said face down images with images of three cards that are face  
10 up, thereby providing an image of a three card Stud Poker hand,  
face up and images of four cards that are face down;

making a three card payout to said player based upon a rank  
of said three card hand, thereby settling said three card wager;

said player causing images of two of said four face down  
15 cards to be replaced by images of two cards that are face up,  
thereby providing an image of a five card Stud Poker hand and  
images of two cards that are face down;

making a five card payout to said player based upon a rank  
of said five card hand, thereby settling said five card wager;

20 said player causing images of said two face down cards to be  
replaced by images of two cards that are face up, thereby  
providing images of seven cards face up that form a seven card  
hand; and

making a seven card payout to said player based upon a rank  
25 of five cards of said seven card hand.



18. In the method of claim 17 wherein said gaming machine stores a signal representation of a joker which is a wild card.

19. In the method of playing a Poker game on a gaming machine that stores signal representations of images of fifty two cards of a standard deck of cards, comprising the steps of:

giving a player an option of making a payment

5 representative of a five card wager and a seven card wager;

causing a video screen of the gaming machine to provide initial images of five cards face up;

said player causing said video screen to replace any of said initial images with images of cards that are face up, thereby  
10 providing an image of a five card Draw Poker hand;

making a Draw Poker payout to said player based upon the rank of said Draw Poker hand, whereby said player's five card wager is settled;

providing images of two additional cards face up, thereby  
15 providing an image of a seven card Stud Poker hand; and

making a seven card Stud Poker payout to said player based upon a rank of five cards of said Stud Poker hand, whereby said player's seven card wager is settled.

20. In the method of claim 19 wherein said gaming machine stores a signal representation of a joker which is a wild card.

# pot<sup>1</sup>

## pot (pŏt) *noun*

1. Any of various usually domestic containers made of pottery, metal, or glass, as: a. A round, fairly deep cooking vessel with a handle and often a lid. b. A short, round container for storing or serving food: *a jam pot; a mustard pot*. c. A coffeepot. d. A teapot.
2. a. Such a container and its contents: *a pot of stew; brewed a pot of coffee*. b. A potful.
3. a. A large drinking cup; a tankard. b. A drink of liquor contained in such a cup.
4. An artistic or decorative ceramic vessel of any shape.
5. A flowerpot.
6. Something, such as a chimney pot or a chamber pot, that resembles a round cooking vessel in appearance or function.
7. A trap for eels, other fish, or crustaceans, typically consisting of a wicker or wire basket or cage.
8. *Games*. a. The total amount staked by all the players in one hand at cards. See synonyms at bet. b. The area on a card table where stakes are placed. c. A shot in billiards or related games intended to send a ball into a pocket.
9. *Informal*. A common fund to which members of a group contribute.
10. Often **pots**. *Informal*. A large amount: *made pots of money on their investment*.
11. *Computer Science*. A section of storage reserved for storing accumulated data.
12. *Informal*. A potshot.
13. *Informal*. A potbelly.
14. *Informal*. A potty or toilet.
15. See potentiometer.

## *verb*

### pot·ted, pot·ting, pots *verb, transitive*

1. To place or plant in a pot: *pot a geranium*.
2. To preserve (food) in a pot.
3. To cook in a pot.
4. To shoot (game) for food rather than for sport.
5. *Informal*. To shoot with a potshot.
6. *Informal*. To win or capture; bag.
7. *Games*. To hit (a ball) into a pocket.

### *verb, intransitive*

*Informal*. To take a potshot.

[Middle English, from Old English *pott*, from Vulgar Latin *\*pottus*.]

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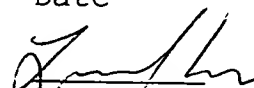
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant : Yehia Awada )  
Serial No. : 09/917,082 )  
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**BRIEF ON APPEAL**

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**REAL PARTY IN INTEREST**

Appellant is the real party in interest.

**RELATED APPEALS AND INTERFERENCES**

Appellant is not aware of any related appeals or  
interferences.

**STATUS OF CLAIMS**

Claims 2-20 have been finally rejected. Claims 2-7, 14-20  
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**STATUS OF AMENDMENTS**

There has been an After Final Amendment that raised an issue  
of the propriety of using patent no. 5,975,529 as a reference.

Appellant : Yehia Awada

Serial No.: 09/917,082

Filed : 07/30/2001

SUMMARY OF THE INVENTION

The best known poker games are three card Poker, five card Stud Poker and seven card Stud Poker. The present invention combines features in all of these games to provide a player with a poker playing experience that is heretofore unknown.

In accordance with one aspect of the invention, prior to a start of play, the player has an option of making any of three Poker wagers that include a three card Stud Poker wager, a five card Stud Poker wager and a seven card Stud Poker wager. After the wagers have been made, three cards are dealt to the player whereby the player has a three card Stud Poker hand. Additionally, four community cards are dealt face down.

When the player has made the three card wager, a payout is made to the player in accordance with a payout table. After the three card wager is settled, two of the community cards are turned face up whereby the player has a five card Stud Poker hand that includes the player's three dealt cards and the two community cards that are face up. When the player has made the five card Stud Poker wager, a payout is made to the player in accordance with the payout table.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

The remaining two community cards are turned face up whereby the player has a seven card Stud Poker hand that includes the player's three dealt cards and the four community cards that are now face up. When the player has made the seven card Stud Poker wager, a payout is made to the player in accordance with the payout table.

In accordance with another aspect of the invention, the player makes a seven card Stud Poker wager and is dealt four cards. The player has an option of making a three card Stud Poker wager after the four cards are dealt.

Three community cards are then dealt that form a three card Stud Poker hand. The player's four cards and the three community cards form a seven card Stud Poker hand. When the player makes the three card wager, a three card payout is made to the player based upon the rank of the three card Stud Poker hand. A seven card payout is made to the player based upon the rank of the seven cars Stud Poker hand.

In yet another aspect of the invention, a gaming machine gives a player an option of making a five card wager and a seven card wager. A video screen of the gaming machine then provides video images of five cards, face up. The player may then cause

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

the machine to make a replacement of the images of the cards, whereby the machine provides an image of a five card Draw Poker hand. A Draw Poker payout is made is made to the player based upon the rank of the Draw Poker hand.

Face up images of two additional cards are then provided whereby and the images of the two additional cards and cards of the five card Draw Poker hand form an image of a seven card Stud Poker hand. A seven Card Stud Poker payout is made to the player based upon the rank of the seven card Stud Poker hand.

#### **ISSUES**

Issue 1 - Whether or not it is permissible to use patent no. 5,975,529, an incomplete document, as a reference.

Issue 2 - Whether or not claims 2-7, 14-18 are unpatentable under 35 U.S.C. 103 (a).

Issue 3- Whether or not claims 19-20 are unpatentable under 35 U.S.C. 103 (a).

#### **GROUPING OF CLAIMS**

For each ground of rejection that Appellant contests herein

**Appellant : Yehia Awada**

**Serial No.: 09/917,082**

**Filed : 07/30/2001**

that applies to more than one claim, such additional claims, to the extent separately identified and argued below, do not stand or fall together.

### **THE ARGUMENT**

***Issue -1- Whether it is permissible to use an incomplete document as a reference.***

The '529 patent of de Keller is used as a reference to support a rejection of claims 2-7, 14-18 of the application. Column 4, line 32 refers to a FIG 1a which is not shown in the drawing of the patent. Column 4, line 54, refers to a table A which is not shown in either the drawing or specification of the patent. Column 4, line 58 refers to a table B which is not shown in either the drawing or the specification.

Figure 1 includes the characters, 1a, connected to a lead line that goes to a table top. The characters, 1a, are not explained in the specification.

In summary, the patent is a defective document. It is believed that because of defects in the patent, appellant and the examiner in charge of the case have differences of opinion as to

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

what the patent does and does not disclose. The differences of opinion are apparent in the following argument of issue 2.

The defects in the patent have placed an unfair burden on the appellant in the prosecution of the above-identified patent application. Because of the unfair burden, the patent should be withdraw as a reference and claims 2-7, 14-18 should be allowed.

***Issue -2- Whether claims 2-7, 14-18 are unpatentable under 35 U.S.C. 103 (a) as being obvious over de Keller in view of 357.***

THE '529 PATENT OF DE KELLER

de Keller discloses a game where two cards are dealt to a player and three community cards are dealt. de Keller's game has two objects. A first object is to "make a good poker hand using two cards and three community cards" (Column 4, lines 10 and 11). "... a house payment schedule lists a series of poker hands with corresponding payoffs..." (Column 4, lines 13-15). A second object is to provide for "...a bet solely between the players and does not involve a wager against the house." (Column 4, lines 17-18). Only the first object is germane to a resolution of issue 2.



**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

In accordance with the first object, de Keller discloses a player making an initial bet and, referring to a FIG. 2, dealing two cards face down to the player and dealing three community cards, one face up and two face down, which is said to "complete each player's five card hand." de Keller refers to a FIG 1a (which does not exist), and states that

"[e]ach player has the option of discarding their first, or second card, or both, face down. Players may at this stage, either 'stand' by making no further bets or raise..." (Column 4, lines 32-34)

FIG. 2 indicates that the player's cards that are discarded are replaced by other cards. Moreover, FIG 2 indicates that after the cards are replaced the, word, "raise", in the column 4, lines 32-34 probably means doubling the initial bet.

de Keller further states that "[w]hen all wagers have been placed...the fourth card is revealed by the dealer." (Column 4, lines 35-37) Correspondingly, FIG 2 states "DEALER SHOWS FOURTH CARD". The fourth card is one of the two community cards that are face down.

de Keller states that after the fourth card is revealed,

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

"[p]layers may again either stand at this stage or raise..." (column 4, lines 37 and 38). FIG 2 indicates that the word, "raise", in column 4, line 38 probably means tripling the initial bet.

FIG 2 further indicates that after making the decision whether or not to triple the initial bet, "DEALER SHOWS FIFTH CARD". The fifth card is the remaining one of the two community cards that is face down.

FIG 2 additionally indicates that after the dealer shows the fifth card that "PLAYERS SHOW CARDS". When the players show their two cards, the five card poker hand of each player is face up whereby wagers can be settled.

#### 357 POKER GAME

Although unstated, presumably 357 starts with a plurality of players each posting an ante to form a first pot. After the posting of the antes, a first round of play starts with a three card Poker hand being dealt to each player with threes wild. Each player decides whether they want to participate in the first round. The players that participate in the first round expose their hands. The player that exposes the highest ranking three

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

card Poker hand wins the first pot. In the words of 357, "[b]est hand wins". The losers in the first round match the first pot and the non-participants post an ante whereby a second pot is formed.

A second round of play starts with two additional cards being dealt to the players whereby each player has a five card Poker hand where fives are wild. Each player decides whether they want to participate in the second round of play. Presumably, the player with the highest ranking five card poker hand wins the second pot. The losers in the second round match the second pot and the non-participants post an ante whereby a third pot is formed.

A third and final round of play starts with two additional cards being dealt to the players whereby each player has a seven card Poker hand where sevens are wild. Presumably, the player with the highest ranking seven card Poker hand wins the third pot.

COMBINING DE KELLER AND 357

The rejection of claims 2-7, 14-18 is predicated upon a number of statements in the final rejection that should either be

**Appellant : Yehia Awada**

**Serial No.: 09/917,082**

**Filed : 07/30/2001**

clarified because they are inaccurate or disposed of because they are untrue. A statement that requires clarification is that 357 discloses making "... a payout to a player based upon the rank of the hand." In the words of 357, what is disclosed is a game where "best hand wins". Ranks of the player's hands are compared to determine which player has the highest ranking hand. Actual rank of the player's hands are unimportant.

The final rejection alleges that "...de Keller discloses a method wherein the player is dealt a plurality of cards and a plurality of community cards are dealt to create a poker hand..." As a matter of clarification, what de Keller discloses is a plurality of community cards, in addition to a plurality of cards dealt to the player, that creates a five card poker hand and only a five card poker hand. (Column 4 lines 31 and 32; claims 3-6 and 10)

The final rejection states that "...both references [357 and de Keller] pertain to poker games using seven cards." As stated above, de Keller is a game where only a five card poker hand is created. In order for de Keller to pertain to a poker game using seven cards, de Keller would have to create a seven card poker hand. de Keller does not create the seven card poker hand.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

Section 706.02(j) of the MPEP states that "[A]fter indicating that the rejection is under 35 U.S.C. 103, the examiner should set forth in the Office action: ... (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter..." This quoted portion of section 706.02(j) was ignored in the examination of the application.

Section 706.02(j) additionally sets forth three basic criteria for establishing a *prima facie* case of obviousness. "First there must be some suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings." As a motivation for combining de Keller and 357, the final rejection states that:

An artisan would be motivated to combine de Keller in view of 357 since multiple wagers would increase the opportunity of large winnings (increase pot) and create excitement amongst players."

After a round of play in 357, non participating players post an ante and losers match the pot. In de Keller, there is an opportunity for the players to raise prior to each of two community cards being shown (FIG 2 of de Keller). In other

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

words, both 357 and de Keller provide for multiple wagers whereby providing for multiple wagers cannot be the suggestion or motivation for combining 357 and de Keller.

A second of the criteria is that there must be a reasonable expectation of success in making the modification. Appellant respectfully submits that features of 357 and de Keller are so disparate that a modification necessary to arrive at appellant's claimed subject matter is not possible. The following is a tabulation of features of 357 and de Keller.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

357

de Keller

3 card, 5 card and 7 card poker hands are created in first, second and third rounds of play, respectively	a 5 card poker hand is created through the use of community cards
there is wagering prior to each round of play	there is an initial wager and wagering prior to each of two community cards being exposed
game is between players. "Best hand wins" a pot after each round of play	game is between the players and the house. A payout is in accordance with payout table after 5 card poker hand is formed

Finally, the combined references must teach or suggest all of appellant's claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on appellant's disclosure.

Appellant's claim 2 calls for dealing three cards to a

**Appellant : Yehia Awada**

**Serial No.: 09/917,082**

**Filed : 07/30/2001**

player, thereby providing the player with a three card Poker hand. The player has an opportunity to bet on the three card Poker hand. Four community are dealt, two of which are used to augment the three dealt cards to form a five card Poker hand. A remaining two of the community cards are used to form a seven card Poker hand. The player has an opportunity to bet on the five and seven card Poker hands. Nowhere in the art of record is there either a teaching or suggestion of using two community cards to augment a three card Poker hand to form a five card Poker hand and then use two community cards to augment the five card Poker hand to form the seven card Poker hand. Nowhere in either 357 or de Keller is there either a teaching or suggestion of a combination thereof that would arrive at anything comparable to appellant's claim 2.

Appellant's claim 14 calls for a player making a seven card Stud Poker wager, dealing four cards to the player and dealing three community cards face down. The player has an option of making a three card Stud Poker wager after the four cards are dealt. The three community cards form a three card Poker hand that is used to augment the player's four cards to form a seven card Poker hand. After the three cards are turned up, three card



**Appellant : Yehia Awada**

**Serial No.: 09/917,082**

**Filed : 07/30/2001**

and seven card payouts are made to the player based upon the ranks of the three and seven card hands, respectively

In connection with appellants claim 14, the final rejection alleges that:

"de keller discloses having a poker game...wherein a player can receive 4 cards and three community cards to form the best five card poker hand out of seven cards, but does disclose wagering and paying out based on a three card poker hand. One would be motivated to combine the references...since both games relate to versions of 7 card stud poker. Therefore, it would have been obvious ... to incorporate 357's method into de Keller because the additional betting round could create the possibility of having multiple winners..."

Regarding the above quoted allegation:

1. As explained hereinbefore, de Keller does not disclose "having a poker game...wherein a player can receive 4 cards and three community cards to form the best five card poker hand out of seven cards.

2. de Keller does disclose wagering on what can be regarded as a three card poker hand but does not disclose paying out based on a three card poker hand. What de Keller discloses is permitting a player to raise an initial bet when one face up community card and the player's two dealt cards are known to the

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

player. The initial bet, whether or not raised, is settled based upon the player's five card hand. This is made clear in claim 10 of de Keller.

3. As explained hereinbefore, de Keller does not disclose a version of seven card stud poker.

4. Since tables A and B of de Keller have been omitted therefrom, appellant assumes that de Keller provides for a payout to a player who holds a hand with the rank of a full house that includes three aces, for example. Because of de Keller's three community cards, it is possible for every player seated at a table, such as shown in de Keller's fig. 1, to simultaneously hold the hand with the rank of a full house that includes three aces. Accordingly, alleging that combining of 357 and de Keller would "create the possibility of having multiple winners" is not only untrue, it is a non sequitur.

In summary, the above quoted statement in the office action is entirely untrue. Hence, the examiner has not given "an explanation of why one of ordinary skill in the art at the time the invention was made would have been motivated to..." combine 357 and de Keller in accordance with MPEP 706.02(j) to show that claim 14 is obvious.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

Claims 17 is to a method of operating a gaming machine to play a game which is the subject matter of claims 2 and 3. Claim 18, which depends from claim 17, provides for storage of a signal representation of a joker. Claims 17 and 18 are allowable for reasons similar to those given in connection with allowability of claims 2, 3 and 6.

For reasons given hereinbefore, issue 2 should be resolved in favor of appellant.

***Issue -3- Whether claims 19,20 are unpatentable under 35 U.S.C. 103 (a) as being obvious over Weingardt in view of Jones.***

THE '818 PATENT OF WEINGARDT

Weingardt discloses a video poker machine wherein signal representations of first, second and third decks of cards are stored. On Weingardt's machine, a player has a choice of playing either five card Draw Poker, six card Draw Poker or seven card Draw Poker.

The player can deposit seven tokens and play seven card poker where images of five cards are dealt from the first deck to a first five positions, respectively, on a video screen. Images

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

of a sixth card and a seventh card are dealt from the second and third decks, respectively, to a sixth and a seventh position, respectively thereby forming the seven-card hand. The player can replace any of the images in the first five positions by images of cards from the first deck. Images of cards in the sixth and seventh positions can be replaced by images of cards from the second and third decks, respectfully. The player has a choice of payment from either a five card, six card or a seven card payout table.

When the player decides to accept a payout from the seven card payout table, the highest ranking hand is a seven card Royal Flush, such as A♥, K♥, Q♥, J♥, 10♥, 9♥, 8♥ in any order of sequence. "The odds of obtaining a seven card Royal Flush are quite high and allow for a gaming establishment to pay a Super Jackpot on that combination. For example, a jackpot amount of 50,000 tokens, 10,000,000 tokens or even amounts in excess of that could be paid." (Column 7, lines 50-55) It should be understood that a player who obtains a six card Straight Flush or Royal Flush could receive a jackpot payout that would be less than the jackpot amount paid to the player who obtains the seven card Royal Flush.

**Appellant : Yehia Awada**

**Serial No.: 09/917,082**

**Filed : 07/30/2001**

THE '150 PATENT OF JONES

In providing for a jackpot in a draw poker game, Jones discloses that a player may participate in a jackpot component in which the player is eligible to receive a jackpot prize by having an initial set of five cards comprising a predetermined arrangement, such as a royal flush, and is also eligible to win a reduced jackpot prize after a draw when the player's final hand comprises the predetermined arrangement.

COMBINING WEINGARDT AND JONES

Jones' method of providing Jackpot components of a game is especially created to be combined with other games. As part of an explanation for combining Jones and Weingardt, the office action confusingly alleges that:

"Weingardt discloses a poker game where a player has an option of placing a five card and seven card wager, the option of playing five card draw poker with the first five cards, the ability to make a five card payout to the player based on the wager, providing two additional cards face up, and making a seven card payout to the player based upon rank of five cards in the seven card hand but does not teach two separate payouts."

Thus, the office action first alleges that Weingardt

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

provides for a five card payout and a seven card payout and then states that Weingardt does not teach two separate payouts.

Appellant does not believe that a response should be made to the allegation because it is a non sequitur.

Perhaps the only motivation for ever combining Jones and Weingardt, or any other game, is to give a player an opportunity to win a large jackpot payout. Weingardt is a game that utilizes a payout table that provides the large jackpot payout. Therefore, there is no suggestion or motivation to combine Jones and Weingardt. Moreover, it is almost inconceivable that there would ever be a suggestion or motivation to combine Jones with a game that utilizes a payout table. Since the suggestion or motivation to combine Jones and Weingardt is necessary to establish a *prima facie* case of obviousness (MPEP 706.02(j)), issue 3 should be decided in favor of appellant.

Respectfully submitted,



Leonard Weiss  
2300 West Sahara Avenue, Box 34  
Las Vegas, NV 89102  
TEL: (702) 933-5505  
AX: (702) 933-5511

### APPEALED CLAIMS

2. In the method of using a standard deck of fifty two cards to play a game, comprising the steps of:

dealing three cards to a player;

providing an opportunity for the player to make a wager on a  
5 rank of a Poker hand formed from said dealt cards;

dealing out four community cards;

giving the player an option of making a five card Poker  
wager and a seven card Poker wager;

10 augmenting said player's three cards with two of said  
community cards to form a five card Stud Poker hand; and  
augmenting said player's three cards with said four  
community cards to form a seven card Stud Poker hand; and  
settling said wagers in accordance with a payout table.

3. In the method of claim 2 wherein said step of settling  
comprises the steps of:

making a three card payout to said player based upon a rank  
of said three card Poker hand;

5 making a five card payout to said player based upon a rank  
of said five card Poker hand; and

making a seven card payout to said player based upon a rank  
of said seven card Poker hand.

4. In the method of claim 2 wherein said community cards are dealt face down.

6. In the method of claim 2 wherein a joker is used as a wild card in playing the game.

7. In the method of claim 2 comprising the additional step of making a bonus payout to said player when a Poker hand has a rank higher than a known rank.



14. In a method of using a standard deck of fifty two cards to play a game, comprising the steps of:

a player making a seven card Stud Poker wager;

dealing four cards to said player;

5 dealing out three community cards face down;

giving said player an option of making a three card Stud poker wager after said four cards are dealt;

turning said community cards face up, a three card Stud  
Poker hand being formed by said community cards and a seven card  
10 Stud Poker hand being formed by said four cards augmented by said  
community cards;

making a three card payout to said player based upon the  
rank of said three card hand; and

making a seven card payout to said player based upon a rank  
15 of a selected five cards of said seven card hand.

15. In the method of claim 14 wherein a joker is used as a wild card in playing the game.

16. In the method of claim 14 comprising the additional step of making a bonus payout to said player when a Poker hand has a rank higher than a known rank.

17. In the method of playing a Poker game on a gaming machine that stores signal representations of images of fifty two cards of a standard deck of cards, comprising the steps of:

giving a player an option of making a payment representative  
5 of a three card wager, a five card wager and a seven card wager;

causing a video screen of the gaming machine to provide an image of each of seven cards that are face down;

said player causing said video screen to replace three of  
said face down images with images of three cards that are face  
10 up, thereby providing an image of a three card Stud Poker hand,  
face up and images of four cards that are face down;

making a three card payout to said player based upon a rank  
of said three card hand, thereby settling said three card wager;

said player causing images of two of said four face down  
15 cards to be replaced by images of two cards that are face up,  
thereby providing an image of a five card Stud Poker hand and  
images of two cards that are face down;

making a five card payout to said player based upon a rank  
of said five card hand, thereby settling said five card wager;

20 said player causing images of said two face down cards to be  
replaced by images of two cards that are face up, thereby  
providing images of seven cards face up that form a seven card  
hand; and

25 making a seven card payout to said player based upon a rank  
of five cards of said seven card hand.

18. In the method of claim 17 wherein said gaming machine stores a signal representation of a joker which is a wild card.

19. In the method of playing a Poker game on a gaming machine that stores signal representations of images of fifty two cards of a standard deck of cards, comprising the steps of:

giving a player an option of making a payment

5 representative of a five card wager and a seven card wager;

causing a video screen of the gaming machine to provide initial images of five cards face up;

said player causing said video screen to replace any of said initial images with images of cards that are face up, thereby  
10 providing an image of a five card Draw Poker hand;

making a Draw Poker payout to said player based upon the rank of said Draw Poker hand, whereby said player's five card wager is settled;

providing images of two additional cards face up, thereby  
15 providing an image of a seven card Stud Poker hand; and

making a seven card Stud Poker payout to said player based upon a rank of five cards of said Stud Poker hand, whereby said player's seven card wager is settled.

20. In the method of claim 19 wherein said gaming machine stores a signal representation of a joker which is a wild card.



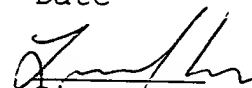
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THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant : Yehia Awada )  
Serial No. : 09/917,082 )  
Filed : July 30, 2001 )  
For : Combined Poker )  
Games )  
Examiner : Capron )

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**REAL PARTY IN INTEREST**

Appellant is the real party in interest.

**RELATED APPEALS AND INTERFERENCES**

Appellant is not aware of any related appeals or  
interferences.

**STATUS OF CLAIMS**

Claims 2-20 have been finally rejected. Claims 2-7, 14-20  
are the subject of this appeal. No other claims are pending.

**STATUS OF AMENDMENTS**

There has been an After Final Amendment that raised an issue  
of the propriety of using patent no. 5,975,529 as a reference.

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SUMMARY OF THE INVENTION

The best known poker games are three card Poker, five card Stud Poker and seven card Stud Poker. The present invention combines features in all of these games to provide a player with a poker playing experience that is heretofore unknown.

In accordance with one aspect of the invention, prior to a start of play, the player has an option of making any of three Poker wagers that include a three card Stud Poker wager, a five card Stud Poker wager and a seven card Stud Poker wager. After the wagers have been made, three cards are dealt to the player whereby the player has a three card Stud Poker hand. Additionally, four community cards are dealt face down.

When the player has made the three card wager, a payout is made to the player in accordance with a payout table. After the three card wager is settled, two of the community cards are turned face up whereby the player has a five card Stud Poker hand that includes the player's three dealt cards and the two community cards that are face up. When the player has made the five card Stud Poker wager, a payout is made to the player in accordance with the payout table.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

The remaining two community cards are turned face up whereby the player has a seven card Stud Poker hand that includes the player's three dealt cards and the four community cards that are now face up. When the player has made the seven card Stud Poker wager, a payout is made to the player in accordance with the payout table.

In accordance with another aspect of the invention, the player makes a seven card Stud Poker wager and is dealt four cards. The player has an option of making a three card Stud Poker wager after the four cards are dealt.

Three community cards are then dealt that form a three card Stud Poker hand. The player's four cards and the three community cards form a seven card Stud Poker hand. When the player makes the three card wager, a three card payout is made to the player based upon the rank of the three card Stud Poker hand. A seven card payout is made to the player based upon the rank of the seven cars Stud Poker hand.

In yet another aspect of the invention, a gaming machine gives a player an option of making a five card wager and a seven card wager. A video screen of the gaming machine then provides video images of five cards, face up. The player may then cause

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

the machine to make a replacement of the images of the cards, whereby the machine provides an image of a five card Draw Poker hand. A Draw Poker payout is made is made to the player based upon the rank of the Draw Poker hand.

Face up images of two additional cards are then provided whereby and the images of the two additional cards and cards of the five card Draw Poker hand form an image of a seven card Stud Poker hand. A seven Card Stud Poker payout is made to the player based upon the rank of the seven card Stud Poker hand.

### **ISSUES**

Issue 1 - Whether or not it is permissible to use patent no. 5,975,529, an incomplete document, as a reference.

Issue 2 - Whether or not claims 2-7, 14-18 are unpatentable under 35 U.S.C. 103 (a).

Issue 3- Whether or not claims 19-20 are unpatentable under 35 U.S.C. 103 (a).

### **GROUPING OF CLAIMS**

For each ground of rejection that Appellant contests herein

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**Serial No.: 09/917,082**

**Filed : 07/30/2001**

that applies to more than one claim, such additional claims, to the extent separately identified and argued below, do not stand or fall together.

### **THE ARGUMENT**

***Issue -1- Whether it is permissible to use an incomplete document as a reference.***

The '529 patent of de Keller is used as a reference to support a rejection of claims 2-7, 14-18 of the application. Column 4, line 32 refers to a FIG 1a which is not shown in the drawing of the patent. Column 4, line 54, refers to a table A which is not shown in either the drawing or specification of the patent. Column 4, line 58 refers to a table B which is not shown in either the drawing or the specification.

Figure 1 includes the characters, 1a, connected to a lead line that goes to a table top. The characters, 1a, are not explained in the specification.

In summary, the patent is a defective document. It is believed that because of defects in the patent, appellant and the examiner in charge of the case have differences of opinion as to



**Appellant : Yehia Awada**

**Serial No.: 09/917,082**

**Filed : 07/30/2001**

what the patent does and does not disclose. The differences of opinion are apparent in the following argument of issue 2.

The defects in the patent have placed an unfair burden on the appellant in the prosecution of the above-identified patent application. Because of the unfair burden, the patent should be withdrawn as a reference and claims 2-7, 14-18 should be allowed.

***Issue -2- Whether claims 2-7, 14-18 are unpatentable under 35 U.S.C. 103 (a) as being obvious over de Keller in view of 357.***

THE '529 PATENT OF DE KELLER

de Keller discloses a game where two cards are dealt to a player and three community cards are dealt. de Keller's game has two objects. A first object is to "make a good poker hand using two cards and three community cards" (Column 4, lines 10 and 11). "... a house payment schedule lists a series of poker hands with corresponding payoffs..." (Column 4, lines 13-15). A second object is to provide for "...a bet solely between the players and does not involve a wager against the house." (Column 4, lines 17-18). Only the first object is germane to a resolution of issue 2.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

In accordance with the first object, de Keller discloses a player making an initial bet and, referring to a FIG. 2, dealing two cards face down to the player and dealing three community cards, one face up and two face down, which is said to "complete each player's five card hand." de Keller refers to a FIG 1a (which does not exist), and states that

"[e]ach player has the option of discarding their first, or second card, or both, face down. Players may at this stage, either 'stand' by making no further bets or raise..." (Column 4, lines 32-34)

FIG. 2 indicates that the player's cards that are discarded are replaced by other cards. Moreover, FIG 2 indicates that after the cards are replaced the, word, "raise", in the column 4, lines 32-34 probably means doubling the initial bet.

de Keller further states that "[w]hen all wagers have been placed...the fourth card is revealed by the dealer." (Column 4, lines 35-37) Correspondingly, FIG 2 states "DEALER SHOWS FOURTH CARD". The fourth card is one of the two community cards that are face down.

de Keller states that after the fourth card is revealed,

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

"[p]layers may again either stand at this stage or raise..." (column 4, lines 37 and 38). FIG 2 indicates that the word, "raise", in column 4, line 38 probably means tripling the initial bet.

FIG 2 further indicates that after making the decision whether or not to triple the initial bet, "DEALER SHOWS FIFTH CARD". The fifth card is the remaining one of the two community cards that is face down.

FIG 2 additionally indicates that after the dealer shows the fifth card that "PLAYERS SHOW CARDS". When the players show their two cards, the five card poker hand of each player is face up whereby wagers can be settled.

### 357 POKER GAME

Although unstated, presumably 357 starts with a plurality of players each posting an ante to form a first pot. After the posting of the antes, a first round of play starts with a three card Poker hand being dealt to each player with threes wild. Each player decides whether they want to participate in the first round. The players that participate in the first round expose their hands. The player that exposes the highest ranking three

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

card Poker hand wins the first pot. In the words of 357, "[b]est hand wins". The losers in the first round match the first pot and the non-participants post an ante whereby a second pot is formed.

A second round of play starts with two additional cards being dealt to the players whereby each player has a five card Poker hand where fives are wild. Each player decides whether they want to participate in the second round of play. Presumably, the player with the highest ranking five card poker hand wins the second pot. The losers in the second round match the second pot and the non-participants post an ante whereby a third pot is formed.

A third and final round of play starts with two additional cards being dealt to the players whereby each player has a seven card Poker hand where sevens are wild. Presumably, the player with the highest ranking seven card Poker hand wins the third pot.

COMBINING DE KELLER AND 357

The rejection of claims 2-7, 14-18 is predicated upon a number of statements in the final rejection that should either be

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

clarified because they are inaccurate or disposed of because they are untrue. A statement that requires clarification is that 357 discloses making "... a payout to a player based upon the rank of the hand." In the words of 357, what is disclosed is a game where "best hand wins". Ranks of the player's hands are compared to determine which player has the highest ranking hand. Actual rank of the player's hands are unimportant.

The final rejection alleges that "...de Keller discloses a method wherein the player is dealt a plurality of cards and a plurality of community cards are dealt to create a poker hand..." As a matter of clarification, what de Keller discloses is a plurality of community cards, in addition to a plurality of cards dealt to the player, that creates a five card poker hand and only a five card poker hand. (Column 4 lines 31 and 32; claims 3-6 and 10)

The final rejection states that "...both references [357 and de Keller] pertain to poker games using seven cards." As stated above, de Keller is a game where only a five card poker hand is created. In order for de Keller to pertain to a poker game using seven cards, de Keller would have to create a seven card poker hand. de Keller does not create the seven card poker hand.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

Section 706.02(j) of the MPEP states that "[A]fter indicating that the rejection is under 35 U.S.C. 103, the examiner should set forth in the Office action:

...(C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter..." This quoted portion of section 706.02(j) was ignored in the examination of the application.

Section 706.02(j) additionally sets forth three basic criteria for establishing a *prima facie* case of obviousness. "First there must be some suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings." As a motivation for combining de Keller and 357, the final rejection states that:

An artisan would be motivated to combine de Keller in view of 357 since multiple wagers would increase the opportunity of large winnings (increase pot) and create excitement amongst players."

After a round of play in 357, non participating players post an ante and losers match the pot. In de Keller, there is an opportunity for the players to raise prior to each of two community cards being shown (FIG 2 of de Keller). In other

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

words, both 357 and de Keller provide for multiple wagers whereby providing for multiple wagers cannot be the suggestion or motivation for combining 357 and de Keller.

A second of the criteria is that there must be a reasonable expectation of success in making the modification. Appellant respectfully submits that features of 357 and de Keller are so disparate that a modification necessary to arrive at appellant's claimed subject matter is not possible. The following is a tabulation of features of 357 and de Keller.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

357

de Keller

3 card, 5 card and 7 card poker hands are created in first, second and third rounds of play, respectively	a 5 card poker hand is created through the use of community cards
there is wagering prior to each round of play	there is an initial wager and wagering prior to each of two community cards being exposed
game is between players. "Best hand wins" a pot after each round of play	game is between the players and the house. A payout is in accordance with payout table after 5 card poker hand is formed

Finally, the combined references must teach or suggest all of appellant's claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on appellant's disclosure.

Appellant's claim 2 calls for dealing three cards to a



**Appellant : Yehia Awada**

**Serial No.: 09/917,082**

**Filed : 07/30/2001**

player, thereby providing the player with a three card Poker hand. The player has an opportunity to bet on the three card Poker hand. Four community are dealt, two of which are used to augment the three dealt cards to form a five card Poker hand. A remaining two of the community cards are used to form a seven card Poker hand. The player has an opportunity to bet on the five and seven card Poker hands. Nowhere in the art of record is there either a teaching or suggestion of using two community cards to augment a three card Poker hand to form a five card Poker hand and then use two community cards to augment the five card Poker hand to form the seven card Poker hand. Nowhere in either 357 or de Keller is there either a teaching or suggestion of a combination thereof that would arrive at anything comparable to appellant's claim 2.

Appellant's claim 14 calls for a player making a seven card Stud Poker wager, dealing four cards to the player and dealing three community cards face down. The player has an option of making a three card Stud Poker wager after the four cards are dealt. The three community cards form a three card Poker hand that is used to augment the player's four cards to form a seven card Poker hand. After the three cards are turned up, three card

**Appellant : Yehia Awada**

**Serial No.: 09/917,082**

**Filed : 07/30/2001**

and seven card payouts are made to the player based upon the ranks of the three and seven card hands, respectively

In connection with appellants claim 14, the final rejection alleges that:

"de keller discloses having a poker game...wherein a player can receive 4 cards and three community cards to form the best five card poker hand out of seven cards, but does disclose wagering and paying out based on a three card poker hand. One would be motivated to combine the references...since both games relate to versions of 7 card stud poker. Therefore, it would have been obvious ... to incorporate 357's method into de Keller because the additional betting round could create the possibility of having multiple winners..."

Regarding the above quoted allegation:

1. As explained hereinbefore, de Keller does not disclose "having a poker game...wherein a player can receive 4 cards and three community cards to form the best five card poker hand out of seven cards.
2. de Keller does disclose wagering on what can be regarded as a three card poker hand but does not disclose paying out based on a three card poker hand. What de Keller discloses is permitting a player to raise an initial bet when one face up community card and the player's two dealt cards are known to the

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

player. The initial bet, whether or not raised, is settled based upon the player's five card hand. This is made clear in claim 10 of de Keller.

3. As explained hereinbefore, de Keller does not disclose a version of seven card stud poker.

4. Since tables A and B of de Keller have been omitted therefrom, appellant assumes that de Keller provides for a payout to a player who holds a hand with the rank of a full house that includes three aces, for example. Because of de Keller's three community cards, it is possible for every player seated at a table, such as shown in de Keller's fig. 1, to simultaneously hold the hand with the rank of a full house that includes three aces. Accordingly, alleging that combining of 357 and de Keller would "create the possibility of having multiple winners" is not only untrue, it is a non sequitur.

In summary, the above quoted statement in the office action is entirely untrue. Hence, the examiner has not given "an explanation of why one of ordinary skill in the art at the time the invention was made would have been motivated to..." combine 357 and de Keller in accordance with MPEP 706.02(j) to show that claim 14 is obvious.

**Appellant : Yehia Awada**

**Serial No.: 09/917,082**

**Filed : 07/30/2001**

Claims 17 is to a method of operating a gaming machine to play a game which is the subject matter of claims 2 and 3. Claim 18, which depends from claim 17, provides for storage of a signal representation of a joker. Claims 17 and 18 are allowable for reasons similar to those given in connection with allowability of claims 2, 3 and 6.

For reasons given hereinbefore, issue 2 should be resolved in favor of appellant.

***Issue -3- Whether claims 19,20 are unpatentable under 35 U.S.C. 103 (a) as being obvious over Weingardt in view of Jones.***

**THE '818 PATENT OF WEINGARDT**

Weingardt discloses a video poker machine wherein signal representations of first, second and third decks of cards are stored. On Weingardt's machine, a player has a choice of playing either five card Draw Poker, six card Draw Poker or seven card Draw Poker.

The player can deposit seven tokens and play seven card poker where images of five cards are dealt from the first deck to a first five positions, respectively, on a video screen. Images

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

of a sixth card and a seventh card are dealt from the second and third decks, respectively, to a sixth and a seventh position, respectively thereby forming the seven-card hand. The player can replace any of the images in the first five positions by images of cards from the first deck. Images of cards in the sixth and seventh positions can be replaced by images of cards from the second and third decks, respectfully. The player has a choice of payment from either a five card, six card or a seven card payout table.

When the player decides to accept a payout from the seven card payout table, the highest ranking hand is a seven card Royal Flush, such as A♥, K♥, Q♥, J♥, 10♥, 9♥, 8♥ in any order of sequence. "The odds of obtaining a seven card Royal Flush are quite high and allow for a gaming establishment to pay a Super Jackpot on that combination. For example, a jackpot amount of 50,000 tokens, 10,000,000 tokens or even amounts in excess of that could be paid." (Column 7, lines 50-55) It should be understood that a player who obtains a six card Straight Flush or Royal Flush could receive a jackpot payout that would be less than the jackpot amount paid to the player who obtains the seven card Royal Flush.

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

THE '150 PATENT OF JONES

In providing for a jackpot in a draw poker game, Jones discloses that a player may participate in a jackpot component in which the player is eligible to receive a jackpot prize by having an initial set of five cards comprising a predetermined arrangement, such as a royal flush, and is also eligible to win a reduced jackpot prize after a draw when the player's final hand comprises the predetermined arrangement.

COMBINING WEINGARDT AND JONES

Jones' method of providing Jackpot components of a game is especially created to be combined with other games. As part of an explanation for combining Jones and Weingardt, the office action confusingly alleges that:

"Weingardt discloses a poker game where a player has an option of placing a five card and seven card wager, the option of playing five card draw poker with the first five cards, the ability to make a five card payout to the player based on the wager, providing two additional cards face up, and making a seven card payout to the player based upon rank of five cards in the seven card hand but does not teach two separate payouts."

Thus, the office action first alleges that Weingardt

**Appellant :** Yehia Awada

**Serial No.:** 09/917,082

**Filed :** 07/30/2001

provides for a five card payout and a seven card payout and then states that Weingardt does not teach two separate payouts.

Appellant does not believe that a response should be made to the allegation because it is a non sequitur.

Perhaps the only motivation for ever combining Jones and Weingardt, or any other game, is to give a player an opportunity to win a large jackpot payout. Weingardt is a game that utilizes a payout table that provides the large jackpot payout. Therefore, there is no suggestion or motivation to combine Jones and Weingardt. Moreover, it is almost inconceivable that there would ever be a suggestion or motivation to combine Jones with a game that utilizes a payout table. Since the suggestion or motivation to combine Jones and Weingardt is necessary to establish a *prima facie* case of obviousness (MPEP 706.02(j)), issue 3 should be decided in favor of appellant.

Respectfully submitted,



Leonard Weiss  
2300 West Sahara Avenue, Box 34  
Las Vegas, NV 89102  
TEL: (702) 933-5505  
AX: (702) 933-5511

### APPEALED CLAIMS

2. In the method of using a standard deck of fifty two cards to play a game, comprising the steps of:

dealing three cards to a player;

providing an opportunity for the player to make a wager on a

5 rank of a Poker hand formed from said dealt cards;

dealing out four community cards;

giving the player an option of making a five card Poker  
wager and a seven card Poker wager;

10 augmenting said player's three cards with two of said  
community cards to form a five card Stud Poker hand; and

augmenting said player's three cards with said four  
community cards to form a seven card Stud Poker hand; and

settling said wagers in accordance with a payout table.

3. In the method of claim 2 wherein said step of settling  
comprises the steps of:

making a three card payout to said player based upon a rank  
of said three card Poker hand;

5 making a five card payout to said player based upon a rank  
of said five card Poker hand; and

making a seven card payout to said player based upon a rank  
of said seven card Poker hand.



4. In the method of claim 2 wherein said community cards are dealt face down.

6. In the method of claim 2 wherein a joker is used as a wild card in playing the game.

7. In the method of claim 2 comprising the additional step of making a bonus payout to said player when a Poker hand has a rank higher than a known rank.

14. In a method of using a standard deck of fifty two cards to play a game, comprising the steps of:

a player making a seven card Stud Poker wager;

dealing four cards to said player;

5 dealing out three community cards face down;

giving said player an option of making a three card Stud poker wager after said four cards are dealt;

turning said community cards face up, a three card Stud  
Poker hand being formed by said community cards and a seven card  
10 Stud Poker hand being formed by said four cards augmented by said  
community cards;

making a three card payout to said player based upon the  
rank of said three card hand; and

making a seven card payout to said player based upon a rank  
15 of a selected five cards of said seven card hand.

15. In the method of claim 14 wherein a joker is used as a wild card in playing the game.

16. In the method of claim 14 comprising the additional step of making a bonus payout to said player when a Poker hand has a rank higher than a known rank.

17. In the method of playing a Poker game on a gaming machine that stores signal representations of images of fifty two cards of a standard deck of cards, comprising the steps of:

giving a player an option of making a payment representative  
5 of a three card wager, a five card wager and a seven card wager;

causing a video screen of the gaming machine to provide an image of each of seven cards that are face down;

said player causing said video screen to replace three of said face down images with images of three cards that are face  
10 up, thereby providing an image of a three card Stud Poker hand, face up and images of four cards that are face down;

making a three card payout to said player based upon a rank of said three card hand, thereby settling said three card wager;

said player causing images of two of said four face down  
15 cards to be replaced by images of two cards that are face up, thereby providing an image of a five card Stud Poker hand and images of two cards that are face down;

making a five card payout to said player based upon a rank of said five card hand, thereby settling said five card wager;

20 said player causing images of said two face down cards to be replaced by images of two cards that are face up, thereby providing images of seven cards face up that form a seven card hand; and

25 making a seven card payout to said player based upon a rank of five cards of said seven card hand.

18. In the method of claim 17 wherein said gaming machine stores a signal representation of a joker which is a wild card.

19. In the method of playing a Poker game on a gaming machine that stores signal representations of images of fifty two cards of a standard deck of cards, comprising the steps of:

giving a player an option of making a payment

5 representative of a five card wager and a seven card wager;

causing a video screen of the gaming machine to provide initial images of five cards face up;

said player causing said video screen to replace any of said initial images with images of cards that are face up, thereby  
10 providing an image of a five card Draw Poker hand;

making a Draw Poker payout to said player based upon the rank of said Draw Poker hand, whereby said player's five card wager is settled;

providing images of two additional cards face up, thereby  
15 providing an image of a seven card Stud Poker hand; and

making a seven card Stud Poker payout to said player based upon a rank of five cards of said Stud Poker hand, whereby said player's seven card wager is settled.

20. In the method of claim 19 wherein said gaming machine stores a signal representation of a joker which is a wild card.